

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

<p>In the Matter of:</p> <p>Petitions for Declaratory Ruling Filed by T-Mobile USA, Inc. et al and US LEC Corp.</p>	<p style="text-align:center">CC Docket No. 01-92</p>
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**COMMENTS OF THE RURAL IOWA INDEPENDENT TELEPHONE ASSOCIATION
IN SUPPORT OF THE PETITION OF US LEC CORP. AND IN OPPOSITION TO
PETITION OF T-MOBILE USA, INC.**

By Public Notice released September 30, 2002, the Commission sought comments on the Petition For Declaratory Ruling filed on September 6, 2002 by several commercial mobile radio service (CMRS) providers (the “T-Mobile Petition”) and on the Petition for Declaratory Ruling filed on September 18, 2002 by US LEC Corp (the “US LEC Petition”). Both Petitions have been docketed in CC Docket No. 01-92 regarding intercarrier compensation for wireless traffic.

Both of these petitions involve a specific type of intercarrier compensation, that is traffic that is “exchanged” between rural telephone companies and CMRS or wireless carriers that are not directly interconnected. Rural Iowa Independent Telephone Association (“RIITA”) offers comments on the exchange of this type of traffic, particularly between rural incumbent local exchange carriers (“ILECs”) and wireless carriers.

RIITA is a non-profit association of rural independent telephone companies, representing approximately one hundred and thirty Iowa incumbent local exchange carriers. All of RIITA’s members actually serve fewer than 15,000 access lines, many serve fewer than 1000 lines. Most

members are exempt rural telephone companies pursuant to section 251(f)(1)(A) of the Telecommunications Act of 1996. 47 U.S.C. § 251(f)(1)(A).

US LEC Petition. Rural ILECs should be allowed to charge the same access rates for interexchange traffic delivered by interexchange carriers (“IXCs”), regardless of the source of that traffic. Rural ILECs perform the same service regardless of the source of the traffic. As RIITA understands US LEC’s petition, it appears to be performing a transiting service for CMRS carriers, unlike RIITA’s members which provide local exchange service. However, US LEC points out there is no dispute that if the calls originated or terminated on a landline that an IXC would pay access charges. There should be no dispute that a LEC is entitled to access charges when the calls originate or terminate on a wireless network.

RIITA urges the FCC to grant US LEC’s Petition for Declaratory Ruling.

T-Mobile Petition. In contrast, T-Mobile does not present a Petition that should be granted because its petition amounts to nothing more than an anti-rural ILEC diatribe. It relies on inaccurate factual assertions to reach unjustified legal conclusions.

RIITA will briefly review some of the factual and legal errors found in T-Mobile’s Petition. However, RIITA notes that in the absence of some sort of evidentiary record, these factual disputes should result in dismissal of T-Mobile’s Petition. The FCC should not accept T-Mobile’s assertions as fact or decide critical matters without more investigation.

Several factual errors in T-Mobile’s Summary of Petition set the tone for the remainder. First, T-Mobile asserts that “because of the small amount of traffic exchanged,” most carriers that interconnect indirectly often interconnect without a contract and pursuant to bill-and-keep. No factual support is offered for this assertion and it is unlikely to be true. Indirect interconnection

ought to occur only with agreement of all of the parties (or tariffs by the parties not included), otherwise, no carrier would traffic ever allow access to its local switched network. Telephone companies provide service for compensation. T-Mobile simply seeks that service for no charge and asserts that this is either common practice or makes sense. T-Mobile, desires to negotiate agreements with RBOCs because without the RBOCs, T-Mobile would need to overbuild vast areas of the country to gain access to the RBOCs customers. In contrast, T-Mobile does not desire to negotiate agreements with rural LECs because it has discovered that it can deliver traffic to their customers at no charge. In Iowa, the only reason carriers interconnect indirectly by bill-and-keep is because both the wireless carriers and the RBOC refuse to pay their bills.

Second, T-Mobile complains that tariffs are one-sided. Yet that is precisely what a tariff is: a public statement that it will cost a certain amount to engage the services of a utility. ILECs offer their services to anyone who is willing to pay the tariffed rates. If T-Mobile has a complaint about the *content* of the tariff, it has numerous remedies available other than to challenge the normal practice of a utility to provide services at a tariffed rate.

Third, T-Mobile complains that “lucrative” tariffs will create a disincentive to ILECs to negotiate, relying on the history of the RBOCs attempts to thwart wireless interconnection. Yet these “lucrative” tariffs raise a fundamental point. If the traffic is *de minimus* and in “small amounts”, why does T-Mobile need this petition in the first place. In truth, when wireless companies want to push traffic onto portions of the switched network to which they are not connected , they call the traffic *de minimus*. When those same portions of the network demand payment for access, switching, and terminating the traffic, then the amounts are suddenly lucrative.

T-Mobile then begins its background facts by asserting that “Type 2A interconnection also

enables a CMRS carrier to obtain indirect interconnection with all other networks that are connected to (or “subtend”) the same LATA tandem switch—whether the network is operated by another ILEC, another CMRS carrier, or a competitive LEC (“CLEC”).” In Iowa, this is not true. Almost no rural Iowa ILECs subtend a Qwest LATA tandem. The vast majority of rural telephone companies in Iowa subtend a tandem belonging to Iowa Network Services, Inc. (“INS”). Qwest delivers traffic to INS over a trunk group ordered for toll traffic. As has been pointed out, a correct view of the technical arrangements used to deliver this traffic is critical to resolving these issues. Unfortunately, T-Mobile assumes those technical arrangements away in a barrage of descriptions about how the industry “ordinarily” and “generally” transits traffic. Historically, in Iowa, wireless traffic was delivered to rural ILECs from INS and to INS by Qwest, which in turn paid access to the subtending ILEC pursuant to tariffs filed by INS and the ILECs.¹

The CMRS connections with the RBOCs were the subject of negotiations between the carriers. These negotiations were the very subject of the FCC’s decision in 1987, discussed on page 8 of T-Mobile’s petition. The FCC did not expect the RBOCs to file tariffs on unresolved negotiation issues because otherwise the RBOCs would not have any incentive to negotiate.

In contrast, most rural ILECs have not received bona-fide requests to interconnect because the CMRS carriers do not want to connect within the ILECs’ service areas.² Furthermore, the CMRS

¹ The same outright factual error is made in footnote 8 of the Petition. T-Mobile asserts that land to mobile calls also travel over the same tandem. In Iowa, land-to-mobile calls, like all interexchange traffic coming from rural ILECs is handed off to an INS tandem. This traffic can bypass Qwest’s tandems entirely.

² Just in case they might have to negotiate interconnection, T-Mobile, like most wireless carriers, lay the groundwork for their assertion that indirect interconnection can be forced on rural ILECs by asserting as a fact that indirect connection is technically feasible and less expensive than all other forms of interconnection. In Iowa, and probably in other states, this is not necessarily true. The costs to the rural ILEC from poor record-keeping or poor quality service by the RBOC may substantially interfere with providing proper interconnection. Furthermore, other alternatives could exist for interconnection: for example, possibilities may exist for interconnection through another rural ILEC or through a centralized equal access carrier. It may be more reasonable to direct connect in some situations. However, these terms should be negotiated with the rural LEC, not dictated by the CMRS carrier and the

carriers believe that by virtue of bill-and-keep, they have no obligation to pay for the traffic they are pushing onto the rural ILECs' networks. Unlike the RBOCs, the rural ILECs simply seek compensation for the use of their networks from carriers who are not even connected directly. If the rural ILECs cannot file tariffs, they will neither be compensated, nor will the CMRS carriers ever come to the negotiating table regardless of the amount of wireless traffic.

CMRS carriers have not negotiated much with rural ILECs, nor do they generally desire direct connections with rural ILECs. Instead, they have simply sought connection through other carriers without the participation of the ILECs. As a consequence, this "interconnection with the public switched telephone network" has been more haphazard than their connection with the RBOCs. In Iowa, the common situation is that rural ILEC-bound CMRS traffic has been routed through Qwest, the state's RBOC. CMRS carriers continued this routing even after Qwest stopped delivering most of its traffic directly to the ILECs. When Qwest requested toll trunks from a centralized equal access carrier, Iowa Network Systems, Inc. ("INS"), to access the rural companies, the CMRS carriers maintained their Qwest connection. Yet, the two-way nature of this traffic was not been maintained. Instead, most of the traffic from a rural LEC to a wireless carrier that has no point of interconnection in the LEC's service area is routed to INS and then delivered to an IXC.

Thus, in contrast to T-Mobile's factual assertion, the local RBOC does not provide the same type of two-way connection that is discussed in T-Mobile's background section.

The technical details of the Iowa's connections are important to any resolution of the issues that T-Mobile raises. Yet T-Mobile provides none of those details and no factual record upon which to support even its most basic premise.

RBOC. At any rate, it is clear that present telecom law does not *require* one form of interconnection over another, as pointed out in the Reply Comments filed in this docket by Rural Independent Carrier Coalition on pages 3-8.

Even T-Mobile's discussion on page 3, about how interconnection occurs is misleading. According to T-Mobile, carriers that interconnect indirectly with each other often do so without a contract and pursuant to bill-and-keep. In Iowa, this is only true because CMRS carriers (and subsequently, Qwest) refuse to pay for their access to the rural carriers' networks. The practice until very recently was that Qwest charged the CMRS carriers for Qwest's transit services and then paid the rural ILECs for terminating the traffic.³

Furthermore, T-Mobile's assertion that the "CMRS Petitioners are willing to negotiate an interconnection agreement" with rural ILECs has not been true in Iowa. Despite their burden to make bona-fide requests to interconnect and to negotiate in good faith, CMRS carriers in Iowa have not been willing to negotiate in good faith and often have attempted to dictate interconnection terms and points of connection without any real negotiation. Again, the real issue is that T-Mobile asserts as fact something that has not been established and that RIITA believes cannot be proved.

Finally, T-Mobile claims that "some" small ILECs do not like the status quo in which "*de minimus*" amounts of intra-MTA traffic is exchanged without formal agreement. The amounts involved may be *de minimus* to T-Mobile, but they are enormous to a small rural carrier who's network is being essentially hijacked. Wireless carriers are pushing hundreds of thousands of dollars worth of minutes onto small carriers' networks each month in Iowa and neither the CMRS carrier, nor Qwest pay for this access. Then, to avoid the conclusion that they are getting access service for free, they hide behind a theory of bill-and-keep that only sounds fair until analyzing the large imbalance of traffic that strongly favors the CMRS carriers.

³ Qwest's complaint was that it charged the CMRS carriers less than the rural ILECs charged Qwest, therefore making the operation unprofitable. This is the underlying basis for the Iowa Utilities Board case rejecting wireless tariffs. However, that decision is being challenged in two cases pending in the United States District Court for the Southern District of Iowa, docket numbers 4:02-CV-90348 and 4:02-CV-40156.

Real solutions to the issues raised by T-Mobile exist and are under discussion in this docket. RIITA, like other commentors, notes that the 1996 Telecommunications Act preserves the access regime and that T-Mobile, along with other CMRS carriers and RBOCs, seek to undermine that regime. If interexchange traffic is delivered to a local exchange carrier through third-party carriers without a negotiated interconnection agreement, that traffic is toll traffic and is subject to access charges. T-Mobile's Petition should be dismissed.

Respectfully Submitted,

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